25 pp.

MONTANA LEGISLATIVE HISTORY

Chapter 577 19 83

Bill H _____ S 201 Original bill & history ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 08	✓C	Hearing Date(s) Jan 31	✓C
Mar 11	✓C	Feb 02	✓C
_____	C	_____	C
_____	C	_____	C
Date Out Mar 11	✓C	Feb 02	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 201 -- TURNAGE, HAZELBAKER, BOB BROWN -- PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION ....

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/19/83
HEARING: 1/31/83
REPORT: 02/02/83, DO PASS
2ND READING: 02/05/83 AYES: 44; NAYS: 3
3RD READING: 02/08/83 AYES: 45; NAYS: 5

TRANSMITTED TO HOUSE: 2/8/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/09/83
HEARING: 3/8/83
REPORT: 03/11/83, BE NOT CONCURRED IN
REREFERRED TO COMMITTEE ON JUDICIARY: 03/14/83
REPORT: 03/24/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/26/83, BE CONCURRED IN AYES: 63; NAYS: 1
3RD READING: 03/28/83, BE CONCURRED IN AYES: 91; NAYS: 6

RETURNED TO SENATE WITH AMENDMENTS: 3/29/83
2ND READING: 04/06/83 AYES: 50; NAYS: 0
3RD READING: 04/07/83 AYES: 50; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/14/83
SIGNED: 04/19/83, CHAPTER 577

SB 202 -- TOWE, ECK, ROUSH -- TO ESTABLISH A METHOD OF DETERMINING COAL DEVELOPMENT IMPACT COSTS INCURRED BY LOCAL GOVERNMENT UNITS AND TO FIX THE MAXIMUM APPROPRIATION AVAILABLE FOR SUCH COSTS FROM THE CONSTITUTIONAL TRUST INCOME EARNINGS.

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/19/83
HEARING: 1/25/83
REREFERRED TO COMMITTEE ON TAXATION: 01/25/83
HEARING: 2/9/83
REPORT: 02/22/83, DO NOT PASS. REPORT ADOPTED.
BILL KILLED.

SB 203 -- TOWE, BLAYLOCK, REGAN, ET AL. -- TO REQUIRE A JUDGE OR JUSTICE WITH 12 YEARS OR MORE OF SERVICE WHO RETIRES BEFORE AGE 65 TO ASSIST THE SUPREME COURT, A DISTRICT COURT, OR A WATER COURT UPON REQUEST OF THE SUPREME COURT OR THE CHIEF JUSTICE OF THE SUPREME COURT.

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/19/83
HEARING: 1/31/83
REPORT: 2/16/83, DO PASS, AS AMENDED
2ND READING: 02/18/83 AYES: 36; NAYS: 8
3RD READING: 02/21/83 AYES: 43; NAYS: 7

TRANSMITTED TO HOUSE: 02/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 03/01/83
HEARING: 3/21/83
REPORT: 03/21/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/22/83, BE CONCURRED IN AYES: 69; NAYS: 1
3RD READING: 03/23/83, BE CONCURRED IN AYES: 88; NAYS: 5

SENATE BILL NO. 201

INTRODUCED BY TURNAGE, HAZELBAKER, B. BROWN

IN THE SENATE

January 19, 1983	Introduced and referred to Committee on Judiciary.
February 2, 1983	Committee recommend bill do pass. Report adopted.
February 3, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 45; Noes, 5. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to Committee on Judiciary.
March 11, 1983	Committee recommend bill be not concurred in. Report adopted.
March 14, 1983	On motion, taken from Adverse Committee Report and rereferred to Committee on Judiciary.
March 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in.

IN THE SENATE

March 29, 1983	Returned to Senate with amendments.
April 6, 1983	Second reading, amendments concurred in.
April 7, 1983	Third reading, amendments concurred in. Ayes, 50; Noes, 0.
	Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 201

INTRODUCED BY Turnage Halligan Bob Brown

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT; AMENDING SECTIONS 30-10-304, 30-14-221, 46-4-305, AND 46-15-311, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-304, MCA, is amended to read:

"30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the

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INTRODUCED BILL

SB 201

commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no ~~individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise),~~ compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case, except that the ~~individual so testifying shall~~ witness is not ~~be~~ exempt from prosecution and punishment for perjury committed in so testifying."

Section 2. Section 30-14-221, MCA, is amended to read:

"30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department

may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence

required of him may tend to incriminate him or subject him to a penalty or forfeiture~~.~~ ~~An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled to testify or produce evidence after having claimed his privilege against self-incrimination. An individual so testifying~~ but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution, except that the witness is not exempt from prosecution and punishment for perjury committed in testifying."

Section 3. Section 46-4-305, MCA, is amended to read:

"46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant immunity to any person subpoenaed ~~immunity from prosecution or punishment for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena.~~ After being granted such immunity, no person may be excused from testifying on the grounds that his testimony may

incriminate him~~;~~ but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law."

Section 4. Section 46-15-311, MCA, is amended to read:

"46-15-311. Compelling testimony or production of evidence -- immunity. Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, ~~he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt for or on account of any transaction, matter, or thing concerning which he testified or produced evidence~~ no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be

used against the witness in any criminal prosecution, except that the witness is not exempt from prosecution and punishment for perjury committed in testifying."

-End-

to the Committee in writing.

Senator Towe closed by agreeing with Nick Rotering about the need for a discharge provision on page 6, line 19 in order to handle the people currently committed to Warm Springs. This was an oversight on his part. He also acknowledged John Maynards' concers and admitted that the verdicts may be over-simplified as now drafted in the bill. He suggested this could be remedied by striking the added sentences on page 2 and reinstating the original wording. He also suggested the deletion of section 3 if page 2 was amended as he suggested.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 27: Representative Koehnke, sponsor of this bill, advised that its intent is to amend the Uniform Commercial Code to provide that there are no implied warranties that seed for planting is disease free. He cited a problem with potatoes as being the cause for the drafting of this bill. It is his opinion that if a farmer is attempting fraud or is negligent, he should be held liable. However, some problems are unforeseen.

PROPONENTS: Mike Koehnke, a farmer from Townsend, testified in support of this bill. He stated that the seed growers are merely trying to accomplish the same thing as the Federal Warranty Act, by requesting the enactment of this legislation.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Hazelbaker stated that the key word here is "implied." Mike Koehnke acknowledged that this was correct. Senator Mazurek then questioned the differences between certified and uncertified seed and Koehnke advised it was a requirement that seeds pass inspection. He also informed the Committee that the Potatoe Association of America has acknowledged the need for this law.

There being no further questions, the hearing was closed.

CONSIDERATION OF SENATE BILL 201: Senator Turnage introduced this bill to the Committee at the request of Judge Douglas G. Harkin. He then read a letter supplied by Judge Harkin which explained the problems with the current Montana immunity

statute (Exhibit "C"). It is his contention that our immunity statute should be similar to the federal law.

There being no proponents or opponents present, the hearing was closed.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:52 a.m.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 1-31-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

EXHIBIT C
January 31, 1983

FOURTH JUDICIAL DISTRICT
MISSOULA RAVALLI LAKE
SANDERS AND MINERAL

STATE OF MONTANA

DEPARTMENT 4
COUNTY COURTHOUSE
MISSOULA, MONTANA

DOUGLAS G. HARKIN
JUDGE OF THE DISTRICT COURT

December 27, 1982

Senator J. A. Turnage
P. O. Box 450
Polson, MT 59860

Dear Senator Turnage:

I would like to bring to your attention a problem with the Montana immunity statute. Section 46-15-311 M.C.A. provides that either the prosecution or the defense may ask the district judge to compel a person to answer a question or produce evidence that may incriminate him. If the person is required to give testimony the person cannot be prosecuted for or on account of the transaction or thing about which he testified.

The Montana method of granting immunity is known as "transactional immunity". Under this form of statute, once the immunity is granted the witness cannot be prosecuted for any transaction about which his testimony is compelled [see Kelly v. Gilbert, 437 F. Supp. 201 (1976)]. The district court order to compel testimony has the effect of granting transactional immunity.

Under federal law, immunity from prosecution may be granted under the authority of 18 U.S.C. §6002, §6003. This form of immunity is commonly known as "use and derivative use" immunity and precludes the use of the compelled testimony and any evidence derived from such testimony.

The critical distinction between the Montana and federal immunity statutes is that the federal immunity statutes allow prosecution for a crime about which testimony was compelled; what is forbidden is the use of the actual testimony or evidence derived from the testimony. Montana law totally forbids prosecution for a crime about which the person has been forced to testify, even if there is evidence separate and apart from the actual testimony given by the person who was granted immunity.

By way of example, in a recent case immunity was granted to a witness so that the defendant could fully exercise his right of cross-examination. The witness, who was a good friend of the defendant, had been charged as an accomplice

EXHIBIT "C"
January 31, 1983

to a homicide and when he was forced to testify he denied any involvement but did testify about some facts of the crime so that there is little doubt that he did give enough testimony to invoke the "transactional immunity" of our statute. The prosecution claims to have enough independent evidence to go to trial without the use of any of his testimony but now the case can never be prosecuted.

The problem caused by our statute is that in order to provide a fair trial to one defendant it may be necessary to allow another defendant to escape prosecution even though there exists independent evidence of his guilt. Often it is necessary to grant immunity to one co-conspirator in order to catch another but that is a conscious choice of the prosecution; under our current Montana statute immunity can be manipulated in a manner never intended.

An immunity law similar to the federal law would accomplish all objectives required of an immunity statute. Your help in correcting this problem would be appreciated. Please feel free to call on me if I could be of any further assistance.

Sincerely,

Douglas G. Harkin
District Judge

DGH/kp

section 44-1-102 as referred to in number 4 of the amendment should be changed to 44-12-102. Senator Mazurek then moved to adopt the amendments. This motion passed unanimously. Senator Crippen moved that SB236 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 201: Chairman Turnage referred the Committee to the letter written by Judge Harkin which summed up the intent of this bill. Senator Shaw moved that SB201 DO PASS. This motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 203: The Committee agreed that the intentions of this bill are good; however, they felt that the bill, as worded, would prevent a judge who was defeated during an election from serving. Action was therefore deferred so that this fact could be taken into consideration.

ACTION ON SENATE BILL 218: Senator Crippen moved that SB218 DO PASS. Senator Berg inquired as to the definition of "disturbed or inebriated" as referred to in the bill. The Committee agreed that these words would give the sheriff some discretionary latitude. The motion for a DO PASS recommendation was then voted on and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 248: John Maynard of the Attorney General's Office, distributed a handout which explains his position on the bill (Exhibit "A"). This information had been requested by the Committee at the January 31 hearing. It was the concensus of the Committee that the bill was not acceptable for passing; however, there were some provisions which needed saving. The 90 day review of fitness to proceed and provision which allows the state to raise this issue were decided to be important. It was also agreed that it is necessary to correct the reference to section 10, which had been incorrectly referred to as section 9 by the past legislature. Counsel questioned if the Committee intended to include a provision for disposition of highly dangerous people who were unfit for further criminal proceedings. The Committee advised they felt a provision of this nature is necessary and referred the bill to counsel for work.

ACTION ON SENATE BILL 196: The Committee was concerned with the automatic cost-of-living adjustment provision of this bill. They felt that if this was passed for the court reporters, other county and city employees would request the same. The salary increase as proposed was again discussed. Senator Crippen suggested reducing the minimum base salary to $16,000 since their overall increase in salary is approximately 30%. Senator Halligan moved the adoption of the above. This motion passed unanimously. The Committee also felt that "for purposes of perfecting an appeal" should be deleted from page 4, line 5,

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 201

Turnage

Respectfully report as follows: That Senate Bill No. 201

(Introduced Bill)

DO PASS.

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE BILL 145

SENATOR TURNAGE, District 13, explained that this bill was introduced at the request of the Montana Supreme Court and it repeals the statutory provision fixing the bar examination fee at $25.00. He said that there is a House bill that says the court will fix the fee commensurate with cost, and this just repeals the old statute.

J. C. WEINGARTNER, representing the State Bar of Montana, stated that they were in support of this bill.

There were no further proponents and no opponents.

SENATOR TURNAGE closed.

REPRESENTATIVE ADDY asked since this bill deals with the same subject as HB 577, is there any conflict. SENATOR TURNAGE replied that maybe this should be checked, that he could not answer that. He thought there maybe should be a coordination or else an amendment on this one saying that HB 577 shall prevail.

REPRESENTATIVE EUDAILY noted that the fiscal note says that the supreme court budget for boards and commissions is predicated on the $400.00 fee and he wondered if the fee was not to cover the cost. SENATOR TURNAGE responded that theoretically they are setting the fee to cover the cost, but he supposed, under the constitutional powers of the court, they could ignore this statute and go ahead by rule and set the fee.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 201

SENATOR TURNAGE, District 13, presented a letter to the committee from Judge Harkin of the Fourth Judicial District, which explains the case for the bill. See EXHIBIT F. He said that there are two methods of granting immunity - one found in federal law and one like that in Montana. He said one is called transactional immunity and one is called use immunity. He explained that this bill proposes to adopt

for the state of Montana the federal rule, that of use immunity, and the net effect of the bill would make it tougher on those accused of crimes. He read from Judge Harkin's letter.

There were no proponents and no opponents.

SENATOR TURNAGE closed.

REPRESENTATIVE ADDY noted that evidently there is a problem in the prosecution of two cases that could not be solved simply by prosecuting the guy they had the goods on first. SENATOR TURNAGE said that he did not attend the trial in the Forsyth case, but that the defendant was defended by a most capable trial attorney, former District Judge Robert Keller, and he insisted that this co-conspirator be called as a witness for Forsyth, claiming that it was essential to Forsyth's proper defense that he be made to testify--it was not the prosecution, it was the defense. He continued that by calling the co-conspirator and getting him to testify, he invoked the transactional immunity statute, and once that was allowed as testimony, then he walked out free, even though he did not pull the trigger, at least the prosecution claimed that there was enough there to charge him with being a conspirator. He indicated that, as a good trial lawyer, if he was representing two people accused of homicide, he would do exactly that.

REPRESENTATIVE ADDY asked if there was a greater likelihood of perjury if you use use immunity rather than transactional immunity. SENATOR TURNAGE responded that if he were being called by the prosecution, he would try to testify on everything that possibly relates to my being charged, and that way even the use immunity would apply. He stated that the real mischief is the way you can manipulate this on the defense side.

REPRESENTATIVE RAMIREZ wondered if there were any articles that discussed just how effective the two types of immunity might be, as it seemed to him that transactional immunity would be much more effective from the law enforcement standpoint in getting people to testify by granting them immunity. SENATOR TURNAGE responded that he did not think you have voluntary witnesses here; they are always there against their will and they sure are not willing witnesses.

CHAIRMAN BROWN wondered if this might get in the way in those cases where it is imperative to grant immunity to the lesser of two evils to get at the evil. SENATOR TURNAGE replied that it is a little hard to tell exactly how this would work in Montana, but he hoped that the federal experience had not been such as to make a change.

There were no further questions and the hearing on the bill was closed.

SENATE BILL 127

SENATOR HAZELBAKER, District 41, stated that this was a bill, which establishes basic peace officer employment standards and educational requirements to be completed within one year of the appointment of deputy sheriffs, undersheriffs, police officers, highway patrolmen, fish and game wardens, etc. and it also allows the Board of Crime Control to grant extensions to the time for compliance with the standards. He explained how he became involved in issues concerning the hiring of peace officers and the establishment of basic standards; and the time has come when they should be put in the law so that everybody knows what they are.

CLAYTON BAIN, Executive Director of the Peace Officer's Standards and Training in the Department of Justice, said that the present act, which has been in effect for the last ten years, authorizes the Board of Crime Control to establish minimum standards for the selecting and training of police officers. He informed the committee that this has changed the whole atmosphere of law enforcement in the state of Montana; over the past ten years, they have certified something like 1,200 peace officers in the state as being qualified to serve at a basic level as law enforcement personnel; and they are trying to take certain parts of the administrative rules and put them into the legal code.

There were no further proponents and no opponents.

SENATOR HAZELBAKER closed by saying the vote in the Senate on this bill was 50 to 0.

REPRESENTATIVE JAN BROWN wondered, if on page 2, lines 23 and 24, wherein it says "a physician, who is not the

SENATE BILL 145

REPRESENTATIVE JENSEN moved that this bill be TABLED. REPRESENTATIVE ADDY seconded the motion.

CHAIRMAN BROWN pointed out that this probably does have to be tabled--it is a repealer of that entire section and if it is passed, it would take precedence over what we did on that other bill that came out of here, at least until we find out differently and Ms. Desmond will check that.

REPRESENTATIVE ADDY asked if this would have the same effect as a coordinating instruction and would we come out to the same place.

REPRESENTATIVE JENSEN asked if we want this repealed, if the other one dies.

The motion carried unanimously.

SENATE BILL 201

REPRESENTATIVE HANNAH moved that this bill BE CONCURRED IN. REPRESENTATIVE CURTISS seconded the motion.

REPRESENTATIVE RAMIREZ stated that he had a problem with this because there might be a situation where law enforcement is aware that immunity might be granted and occasionally people come forward, if they know that they might get immunity. He felt that they did not get very much information as to the effect of what this might do and by changing the policy, there might be some problems the other way.

REPRESENTATIVE ADDY said that he was not that uncomfortable with this bill; this is the federal form of immunity and the form of immunity that he worked with for four years while in the service; it did not seem to him to have that much impact on a defendant's decision to testify or not; you could plea-bargain or whatever before you testify against a co-defendant and if they agreed not to prosecute in exchange for that testimony, those agreements were honored. He thought that this gives more flexibility to the prosecutor-he has a choice between use immunity or you could negotiate.

REPRESENTATIVE RAMIREZ recognized the fact that REPRESENTATIVE ADDY knew a lot more about this then he did, but he felt that it was a major policy decision because he did not have a good feeling about what the consequences of this policy change would be, and he did not feel that he got that much from the hearing. He said that it is not just a matter of the question of whether the rights of the accused are protected, even though in the backroom they can grant broader immunity, he did not know if this is the direction they want to go and he is concerned about the effects on the prosecution.

REPRESENTATIVE BERGENE asked REPRESENTATIVE RAMIREZ if it was his hope that SENATOR TURNAGE could get us some of those citations. REPRESENTATIVE RAMIREZ replied that he did not think he really had any and what he would propose to do himself is just call the Attorney General's office and ask them if they could get me some information on it.

CHAIRMAN BROWN stated that he would be inclined to hold this for a day, with the committee's permission, and ask MS. DESMOND to call over and get this information.

SENATE BILL 127

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE HANNAH wondered if this bill does not relate to why the Senate killed the bill about allowing all peace officers to go to training - apparently this does the same thing. REPRESENTATIVE KEYSER replied that that is not correct; that this language that is in here has been adopted as rules and regulations by the board and what they are doing is actually making this into statutes rules that they have already adopted and using in the training process.

REPRESENTATIVE JAN BROWN moved to amend page 5, line 6, by striking the word, "MANPOWER" and inserting "PERSONNEL". REPRESENTATIVE DARKO seconded the motion. The motion carried with REPRESENTATIVE KEYSER and REPRESENTATIVE DAILY voting no.

CHAIRMAN BROWN advised that his understanding was that the Montana Mental Health Association likes the bill as it presently is, and they oppose it as it was originally written.

REPRESENTATIVE JENSEN said if they originally opposed the bill, they would also oppose the bill with Representative Keyser's amendment, because it would then be the original bill.

A vote was taken on the motion to amend and it failed with 4 voting aye and 13 voting no. See ROLL CALL VOTE.

REPRESENTATIVE HANNAH said that the individual who amended this bill as it is now was Senator Towe, who is a leading advocate of the Montana Mental Health Association; he is the original author of the bill when it came through the legislature two or three terms ago and he does not know why they are opposed to it.

REPRESENTATIVE BERGENE indicated that it is hard for her to vote for a bill which does not address the basic problem of the commitment law; that she felt that the commitment law is going to have to be brought out and addressed; she wished she had done it this session; because there are a lot of problems with it and she felt that Senator Towe meant well, but he does not understand how many problems there are with it.

A vote was taken on the motion to BE NOT CONCURRED IN. The motion carried with REPRESENTATIVE ADDY and REPRESENTATIVE DAILY voting no. The vote was 17 ayes and 2 nos.

SENATE BILL 201

REPRESENTATIVE RAMIREZ said he found some information; the uniform rule adopts transactional immunity as opposed to what the federal government has, which is use immunity. He alleged that there are two different situations where immunity is granted i. e. (1) is where the prosecution does know that a person is involved and they want to grant immunity and it is initiated by the prosecution; (2) someone is involved in a crime and he initiates voluntarily the information which they may need if they will give him immunity in return for this information. He

read from an article, which addressed some of the problems with use immunity and transactional immunity. He noted that transactional immunity reduces the need for extended court hearings and gives a broad flow of information to the government. He moved that this bill BE NOT CONCURRED IN. REPRESENTATIVE SPAETH seconded the motion.

REPRESENTATIVE KEYSER made a substitute motion to BE CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE JENSEN noted that Marc Racicot felt the problem in Montana arises from transactional immunity in that they will get someone who is a coconspirator; he gets on the stand; he will say that he committed the crime and the first guy gets off because the jury is confused. He felt that they need to decide where they get justice more often.

REPRESENTATIVE FARRIS asked which way is it less likely to happen that everyone gets away. REPRESENTATIVE RAMIREZ replied that he thought it was debatable; the point that was made in the article is that when you give use immunity, you are not likely to get nearly as much information from the person you are granting immunity to because, even though that person's testimony cannot be used against him, he is still guarded, because you cannot use any evidence that this testimony leads to. He noted that, when you just have use immunity, you are not going to get as much information out of that person.

REPRESENTATIVE JENSEN asked if the jury can be instructed that a coconspirator has been granted immunity. REPRESENATIVE RAMIREZ replied that he was not sure; it was discussed in this article, but he did not read that part of it.

REPRESENTATIVE RAMIREZ indicated that it may be that what they want is a use immunity alternative, which would be in the discretion of the prosecutor to avoid this kind of problem. He wondered why they have to take one or the other; why couldn't they have a combination; you can in the sense that you can have a secret deal with the

county attorney, who gives use immunity and then promises secretly that he won't prosecute. He stated that he was inclined to kill this bill and come back next time with that option, giving them use immunity when it is a coconspirator situation.

REPRESENTATIVE KEYSER commented that, while it would be nice if they could use both of them, right now Montana uses transactional immunity; that is what we have and that is what we are stuck with; and he felt that if he were going to opt for the better of the two, (the one that turns fewer people loose, even though they may lose more information) then he would go for use immunity.

REPRESENTATIVE SEIFERT asked if this tightens up the immunity law, considering the way this bill is drafted. REPRESENTATIVE RAMIREZ replied that, in one sense, it does, but he disagrees with Representative Keyser. He contended it is is a judgment decision as to which is going to result in more people being convicted - if you can get more testimony, you can get more convictions. He cited an example, whereby a contractor is paid off by a public official through an intermediary; if you give this contractor only use immunity; (what you really want is to get at the public official) he is not going to tell you anything; because he is afraid that you might be able to come in the back door and still prosecute him on other evidence; so you are not going to get his full cooperation. He continued that if you give him full immunity, he is going to spill everything; because he is worried that you will come back on him. Under these circumstances, he wondered which one leads to prosecuting the most people; and he noted that the article in these arguments said that transactional immunity does. He stated that the only problem you have with use immunity is this situation where there is a coconspirator.

A vote was taken on the motion BE CONCURRED IN. The motion failed with 8 voting aye and 10 voting no. See

ROLL CALL VOTE. REPRESENTATIVE IVERSON moved that they reverse the vote. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the meeting be adjourned at 11:16 a.m.

DAVE BROWN, Chairman

Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 11 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 201

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT: AMENDING SECTIONS 30-10-221, 46-4-305, AND 46-15-311, MCA."

Respectfully report as follows: That SENATE Bill No. 201

BE NOT CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY